



**THE ATTORNEY GENERAL
OF TEXAS**

Gerald C. Mann

AUSTIN 11, TEXAS

~~XX JOHN BEN SCHLESINGER XX~~
ATTORNEY GENERAL

Hon. Fred Norris
County Auditor
Polk County
Livingston, Texas

Opinion No. O-3132

Re: Can a county of 20,635 population, according to the 1940 Census be charged with commissions or fees for the county treasurer, and another related question?

Dear Sir:

Your letter of February 5, 1941, requesting an opinion of this department, later modified by your recent letter of May 24, presents the following questions:

"1. Can a county of 20635 population, according to the 1940 Census, charge commissions or fees for the County Treasurer?

"2. Should the treasurer in the above mentioned County deposit his fees into the officer's Salary Fund?

We have restated your first question in the caption set forth above as we understand it.

Article 3943, Vernon's Annotated Civil Statutes, in part, provides:

"The commissions allowed to any county treasurer shall not exceed Two Thousand Dollars (\$2000.00) annually; ***."

Section 13, Article 3912e, Vernon's Annotated Civil Statutes, in part, provides:

"The Commissioners' Court in counties having a population of twenty thousand (20,000) inhabitants or more, and less than one hundred and ninety thousand (190,000) inhabitants according to the last preceding Federal Census, is hereby authorized and it shall be its duty to fix the salaries of all the following named officers, to-wit: sheriff, assessor and collector of taxes, county judge, county attorney, including criminal district attorneys and county attorneys who perform the duties of district

attorneys, district clerk, county clerk, treasurer, hide and animal inspector. Each of said officers shall be paid in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation by him in his official capacity for the fiscal year 1935, and not more than the maximum amount allowed such officer under laws existing on August 24, 1935; ***."

Section 7, Article 3912e, Vernon's Annotated Civil Statutes, reads, in part, as follows:

"All monies drawn from said Officers' Salary Fund or funds shall be paid out only on warrants approved by the county auditor in counties having a county auditor; otherwise all claims against said fund shall first have been audited and approved by the Commissioners' Court of said county and the monies shall be disbursed on such approved claims by warrants drawn by the county treasurer on said fund."

Section 5, Article 3912e, of said statutes, in part, provides:

"It shall be the duty of all officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law to be assessed and collected for all official service performed by them. As and when such fees are collected they shall be deposited in the Officers' Salary Fund, or funds provided in this Act. ***."

Section 3, of Article 3912e, of said statutes, provides:

"In all cases where the Commissioners' Court shall have determined that county officers or precinct officers in such county shall be compensated for their services by the payment of an annual salary, neither the State of Texas nor any county shall be charged with or pay to any of the officers so compensated, any fee or commission for the performance of any or all of the duties of their offices but such officers shall receive said salary in lieu of other fees, commissions or compensation which they would

otherwise be authorized to retain; provided, however, that the assessor and collector of taxes shall continue to collect and retain for the benefit of the Officers' Salary Fund or funds hereinafter provided for all fees and commissions which he is authorized under law to collect; and it shall be his duty to account for and to pay all such monies received by him into the fund created and provided for under the provisions of this Act; provided further, that the provisions of this Section shall not affect the payment of costs in civil cases by the State but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act to account for fees, commissions and costs collected from private parties."

The county treasurer, being specifically named in Section 13, Article 3912e, supra, the method of fixing the county treasurer's compensation formerly prescribed by Article 3941, Revised Civil Statutes, 1925, has been superseded by the foregoing provisions of the Officers' Salary Law as they apply to counties of twenty thousand (20,000) inhabitants or more. The law provides that a county treasurer in such counties shall draw all warrants on the Officers' Salary Fund, which must be approved by the county auditor.

Relative to your first two questions, the foregoing statutes require the officers designated to deposit all fees and commissions collected for all official services performed by them in the Officers' Salary Fund. Since they are prohibited from making any charge to the county, such commissions as prescribed in Article 3941, Revised Civil Statutes, are no longer "permitted by law to be assessed and collected" as provided in Section 5, of Article 3912e, supra.

It is, therefore, the opinion of this department that your questions in the order presented should be answered in the following manner:

1. Question No. 1. is answered in the negative.
2. Commissions authorized by Article 3941, Revised Civil Statutes, 1925, can no longer be charged to the county in those counties with twenty thousand (20,000) inhabitants or more,

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therefore are not to be deposited in the Officers' Salary Fund.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Wm. J. R. King

Wm. J. R. King, Assistant

APPROVED JUL 8, 1941
/s/ Grover Sellers
FIRST ASSISTANT ATTORNEY GENERAL

This opinion considered and approved in limited conference.

WJRK:RS:wb